

***United States Court of Appeals
for the Second Circuit***



ADDENDUM

76-2163

76-2163-4

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

KENNETH WILLIAM SCHAFFER

VS:

CARL ROBINSON, WARDEN, CONNECTICUT
CORRECTIONAL INSTITUTION AT SOMERS,
CONNECTICUT

On Appeal from the United States District
Court for the District of Connecticut

ADDENDUM OF THE RELATOR - APPELLANT,
KENNETH WILLIAM SCHAFFER

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§ 54-42. [Bench warrant. Procedure on arrest. Conditions of release]

Upon the representation of any state's attorney that he has reasonable ground to believe that a crime has been committed within his jurisdiction, the superior court or, when said court is not in session, any judge thereof, may issue a bench warrant for the arrest of the person or persons complained against, and in such case shall, except in cases punishable by death or life imprisonment, fix one of the following conditions of release, which such court or judge finds necessary to assure such person's appearance in court: (1) written promise to appear; (2) execution of a bond without surety in no greater amount than necessary or (3) execution of a bond with surety in no greater amount than necessary. When any person is arrested on a bench warrant issued by order of the superior court or, when said court is not in session, by a judge thereof, the officer or indifferent person making such arrest shall without undue delay bring such person before the clerk or assistant clerk of the superior court for the county or judicial district where such warrant was issued, during the office hours of such clerk and if such clerk's office is not open, such officer or indifferent person shall, without

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CRIMINAL PROCEDURE

§ 54-43

undue delay, bring such person to a community correctional center within the county or judicial district where such warrant was issued or, if there is no such correctional center within such county or judicial district, to the nearest community correctional center and said clerk or assistant clerk or such person designated by the commissioner of correction shall thereupon advise such person that he has a right to retain counsel, that he has a right to refuse to make any statement, and that any statement he makes may be introduced in evidence against him, and shall order such person to enter into a recognizance pursuant to the condition fixed by such judge or court conditioned that such accused person shall appear before the superior court having criminal jurisdiction then in session or next to be held in and for the county or judicial district where such bond is required, to answer to the bench warrant and information filed in such case; and on his failure to enter into such recognizance or if the offense charged in such bench warrant and information is not bailable, such clerk or assistant clerk or such person designated by the commissioner of correction shall issue a mittimus committing such person to a community correctional center until he is discharged by due course of law. If the accused person has previously entered into a bond with or without surety set by the court of common pleas in connection with the same offense or offenses charged in the bench warrant, the superior court or judge thereof issuing such bench warrant may adopt such previous bond or set or modify conditions of release as he determines in accordance with the provisions of this section. If such court or judge decides to modify the amount of any previous bond by increasing it, and if the accused person has met the requirements of such previous bond, such accused person shall be released if he enters into a new bond equal to the difference between the new amount of bond set by the court or judge and the previous bond shall remain in effect.

(1963, P.A. 126, § 2; 1969, P.A. 803, § 1; 1973, 73-116, § 23, eff. April 25, 1973; 1973, P.A. 73-667, § 1, eff. June 27, 1973; 1976, P.A. 76-106, § 1.)

1963 Amendment. . . . conditions no

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§ 471

§ 471. Police often investigate inadequately

In the main, the investigation techniques employed in a homicide closely follow portions of the police investigation. This helps in developing the defense and can point out errors made by the police.

Many police departments have a tendency to close a case as soon as possible after it has come to their attention. This is often necessitated by the large number of cases they are investigating.

The police then, in many cases, begin with a premise, jump to a conclusion, and try to construct a chain of evidentiary links that will lead back to the premise.

Consequently, counsel should realize that a police investigation is often incomplete, and enormous holes in the case can be turned to the advantage of the defense.

§ 472. Goals of investigation

Your investigation should seek to destroy the state's neatly constructed case by attacking the premises on which it is based. One false premise exposed by proper investigation will topple the inverted pyramid of the prosecution's case. The goal of the investigation is to release the defendant from the chain of circumstances that link him with the commission of the offense. This can be done by (1) refuting the motive assigned by the police for the killing, (2) proving an alibi, or (3) proving facts tending to show that someone else is the killer.

§ 473. Study victim's family and friends

National crime statistics indicate that approximately 80 per cent of murders and manslaughters are committed by members of the family or by close acquaintances. A thorough study of the deceased's relationship with his family and friends may be fertile ground for creating reasonable doubt of your client's guilt. Briefly stated, in every homicide case that is based on circumstantial evidence, the job of the defense counsel is to establish the existence of possible alternative conclusions to the prosecution's case.

§ 474. Arrival at crime scene

The investigator arriving at the scene of an apparent homicide is very often confronted with a number of persons milling about in confusion, yet his activities during the first fifteen minutes will largely determine the success or failure of the investigation.

KENNETH SCHAFER

: SUPERIOR COURT

VS.

: HARTFORD COUNTY

THE WARDEN

: FEBRUARY 27, 1975

MEMORANDUM OF DECISION

In his brief the petitioner bases this cause of action on four grounds:

The first of these is that he was not arraigned "forthwith." The procedure for an arrest on a bench warrant as prescribed by General Statutes § 54-43 requires that the arresting officer "shall without undue delay" bring such person to a community correctional center. The officer's return reveals that on August 25, 1973, the bench warrant was issued and that he was arrested and presented to the clerk at the correctional center - all on the same date. Moreover, he was arraigned at the next session of the Superior Court, which was August 30, 1972. The element of speedy presentation was therefore satisfied.

The second basis for relief is the claim that the bench warrant was insufficient to confer jurisdiction on the defendant-petitioner. The short answer to this argument is that any such claim is waived by reason of its not having been raised until long after his trial. Thus, the defendant is deemed to have submitted to the court's jurisdiction of his person and also to

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have waived any possible defect of the bench warrant. Reed v. Reincke, 155 Conn. 591, 599. While this ruling disposes of this claim, it may be also observed that the affidavit provided in the application for the bench warrant amply satisfies constitutional requirements. Aguilar v. Texas, 378 U.S. 23; State v. Licari, 153 Conn. 127. Thus, the failure to raise this issue in timely fashion would not have affected the result.

The petitioner, as his third ground, claims that the absence of a probable cause hearing or its equivalent did in and of itself cause a failure to confer jurisdiction over him. Again, this claim was not seasonably made. See Reed v. Reincke, supra p. 599. In a case of murder it is the settled law that there is no right to a hearing in probable cause as directed in General Statutes § 54-76a. See State v. Stallings, 154 Conn. 272, 276, and the reasons stated therein. See also Coleman v. Alabama, 389 U.S. 1.

As a final basis for the granting of the writ of habeas corpus, the petitioner asserts that there was a failure to allow him or his counsel disclosure information at the early stages of the proceeding. Actually, this refers to his motion for disclosure, which was confined to merely seeking the names and addresses of witnesses testifying before the Grand Jury. This motion was denied.

The Grand Jury requirement is prescribed by the Connecticut Constitution, Article I, Section 8. Its function is to determine whether there is sufficient evidence to require that

"a person shall be held to answer for any crime." Under our practice, the State's Attorney merely furnishes names of witnesses whom the grand jury may or may not call, at its pleasure. Also, the grand jury may call witnesses other than those offered by the State's Attorney. It is obvious, therefore, that a defendant cannot be provided with a list of witnesses which will necessarily be accurate.

Other circumstances indicate that this denial of the witnesses' names is of little significance. In the first place, the defendant is present at the grand jury session and may thus ascertain their identity. In this case, too, there is a lengthy affidavit submitted on the question of probable cause, which contained the names of potential witnesses. The petitioner's counsel obtained a copy of this affidavit and mailed it to him on August 31, 1972 -- about two months prior to the grand jury session.

In support of this, his final claim, no legal authorities are cited. In the absence of such precedent, and considering that there is no showing of actual prejudice, it is felt that the denial of the motion for disclosure is not a tenable ground on which to base this action of habeas corpus.

The writ of habeas corpus is denied and judgment may enter in favor of the defendant.

ALEXANDER .J.

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NO. 3593

STATE OF CONNECTICUT

VS.

KENNETH SCHAFFER

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:

SUPERIOR COURT

TOLLAND COUNTY

MARCH 6-13, 1973

BEFORE: HONORABLE JOSEPH F. DANNEHY,
HONORABLE WILLIAM P. BARBER, AND
HONORABLE JAY E. RUBINOW, JUDGES

APPEARANCES:

DONALD B. CALDWELL, ESQ.

EDWIN M. LAVITT, ESQ.
JONATHAN KAPLAN, ESQ.

STATE'S ATTORNEY

FOR THE DEFENDANT

Shirley P. Whitehead
Official Reporter
Tolland County

A Yes. Yes, I did.

Q Who was with you at that time, if any--

A Trooper-- now Sergeant John Watson.

Q Did you meet someone at the Vernon Police Department?

A Yes. We met a subject who identified himself as Kenneth Schaffer.

Q And do you know Kenneth Schaffer?

A Yes, I do.

Q Is he in the courtroom? A Yes, he is.

Q Where is he? A He is seated at the end of the table over here (indicating).

MR. CALDWELL: May the record show the Trooper has pointed to the defendant, Mr. Schaffer.

JUDGE DANNEHY: The record may indicate the witness has identified the defendant, Kenneth Schaffer.

BY MR. CALDWELL:

Q And it was this man that you met at the Vernon Police Department? A That's correct.

Q And was anyone with him at the time?

A Yes. His sister Zandra, another female by the name of Bonnie Page, and a young juvenile, a five-or-six-year-old juvenile. I don't have his name at all.

Q Do you recall-- did you observe, Trooper, what kind of automobile Mr. Schaffer was operating?

A Yes. He was operating a maroon Pontiac, four-door.

Q Do you know the year? A '63 or '64. I don't

recall offhand what it was.

Q And after meeting with Mr. Schaffer at the Vernon Police Department, did you proceed to any other location?

A Yes. Trooper Watson and I were in a cruiser, and we were followed to Rockville Hospital by Mr. Schaffer and the others who were accompanying him.

Q In that car that you described?

A That's correct.

Q And did-- what occurred at the hospital, would you tell us please-- I'm sorry. About what time was it that you arrived at the hospital, if you know? A It was sometime after 7 o'clock. The meeting at the Vernon Police Department was shortly after 7, and I would say it was in the area of 7:30 or thereabouts.

Q And this was on July 4, 1972? A That's correct.

Q And now will you tell us what happened in the hospital at that time? A Well, we met the nurse in charge over there, and Sergeant Watson and myself and Mr. Schaffer and his sister went down to the morgue in the Rockville Hospital.

Q What happened in the morgue? A The nurse in charge opened up the door for the refrigerator unit down there and pulled out a tray, on which the body of the victim was lying, and Mr. Schaffer immediately identified the body as being that of his wife, Mildred Schaffer.

Q Did you have any conversation with Mr. Schaffer at that time concerning the case, concerning the death of his wife?

A There was some-- I don't recall what the nature was, if there was. We had a brief conversation at the hospital, and we asked him-- Trooper Watson and myself asked Mr. Schaffer if he would then after the identification come over to Trooper Watson's office in Ellington-- at the time Trooper Watson was the Resident Trooper in Ellington-- to assist us in obtaining some information that might be valuable in our investigation.

Q And did he agree to do this? A Yes, he did.

Q Did you then proceed to Ellington? A Yes, we did.

Q And how did you go to Ellington?

A Well, Trooper Watson and I went in his car, and Mr. Schaffer followed us over in his Pontiac.

Q And at the Resident Trooper's office in Ellington, Trooper, did you and Trooper Watson talk with Mr. Schaffer concerning his wife? A Yes, we did.

Q And did you take a statement from Mr. Schaffer?

A Yes, I did.

Q Did you-- that's withdrawn. Was Mr. Schaffer in any kind of custody at that time? A None whatsoever.

Q Did you ask him if he was willing to give a statement?

A Yes. He said he would assist us in any way he could to find the perpetrators of the crime.

Q Did Mr. Schaffer on that occasion tell you when he had last seen his wife? A Yes.

Q And what did he tell you?

MR. LAVITT: I object. I would like to ask one

Q Do you know much about-- A No, I don't.

Q -- cars? But it was a truck? A Yes.

Q Could you tell whether anyone was in the truck?

A There was two people in the truck.

Q And you could see that? A Yes.

Q How long did you stay after this truck went by?

A About fifteen minutes.

Q Did anything else go by in the meantime?

A No.

Q Now, when you left, how did you go out?

A The same way we came in.

Q The same way you came in. You went back toward Ellington?

A Yes. Yes.

Q Miss Cocheran, at some time after this early morning of July 4, did you go to the State Police Barracks up in Stafford?

A Yes, I did.

Q And did they-- did they show you anything up there?

A Yes. They showed me a car.

Q And did you recognize that car at all?

A No.

Q Did you give a statement to the State Police?

A Yes, I did.

Q Do you know whether you signed the statement?

A No. I didn't sign it.

MR. CALDWELL: Okay. I have no further questions.

MR. CALDWELL: May I have just a minute, Your Honors?

BY MR. CALDWELL:

Q In addition to taking photographs, Trooper Hutchinson, did you do anything else at the scene that morning?

A Yes, sir. I took measurements and information for the preparation of a rough sketch map of the scene and the immediate surrounding area.

Q What kind of measurements did you take?

A Linear measurements with a tape measure.

Q Yes, but of what objects?

A Of the road, of articles in and around the body of the deceased.

Q And did you when you arrived at the scene also observe any tire marks on the road? A Yes, I did.

Q Did you take any measurements of those tire marks?

A Yes, sir.

Q And what was the surface of this roadway?

A Dirt and gravel.

Q And could you describe for us, Trooper, what tire marks you observed that you measured? A I observed one set of

tire marks comprised of two wheels located approximately sixteen feet five inches from the body of the deceased travelling in a westerly direction from the scene.

Q And did you make any connection between those tire marks and this incident? A Yes, I did. It was my--

of dirt roads in this area? A Yes, sir, there are.

Q You feel as an estimate thirty or forty times you have been involved in investigation and examination of tire marks on dirt roadways? A Yes, sir. I would say that.

MR. CALDWELL: I think from that, Your Honors please, he can testify as to what he saw on the roadway in connection with those tire marks.

JUDGE DANNEHY: Well, do you rest with that?

MR. CALDWELL: Yes, Your Honor.

JUDGE DANNEHY: Then the objection at this point is sustained.

BY MR. CALDWELL:

Q All right. Trooper, can you, without giving us any conclusion on your part, can you describe for us the tire marks?

A Yes, sir.

Q Would you do that?

A The tire marks were, as I stated previously, going in -- roughly in a westerly direction from the location of the body, from the extreme south portion of the highway, or that portion of the highway furthest away from the body. The tire marks included the base where the face of the tire would be. They also-- there was also in and around the area of the tread mark numerous stones, gravel, dirt, thrown up and strewn about.

Q And you could tell that from an examination of the tire marks themselves? A Yes. Well, this was very evident from looking at it.

Q And from your experience, Trooper, is it possible for you to determine-- I withdraw that. On these tire marks that you examined, was there any other-- did you observe any other tire marks crossing them or obliterating them in any way?

A No, sir, I did not.

Q Did you observe any other tire marks on this dirt roadway at all? A Yes, sir.

Q But none of them had crossed or obliterated these marks that you measured? A 'No, sir.

(Pause.)

Q Did you, Trooper Hutchinson, measure the width of these tire marks? A You mean the actual width of the tread?

Q Yes.

A Or the distance between the two marks?

Q First, the width of the tread of these tire marks?

A Yes, sir, I did. The width of the track itself measured six and three-quarters inches.

Q Each of the marks? A Yes, sir.

Q And did you measure the distance between the tire marks on the roadway--

JUDGE RUBINOW: Is that between the two inner surfaces you are talking about?

MR. CALDWELL: Yes, Your Honor-- whatever you measured--

A Yes. That would be between the two inner surfaces of the tire.

JUDGE DANNEHY: Measuring the track of the tire--

A Yes, Your Honor.

JUDGE DANNEHY: -- that was six and three quarters inches?

A Yes, sir.

JUDGE DANNEHY: What was the next question-- you measured the distance between what?

MR. CALDWELL: Between the two tire marks you described.

JUDGE RUBINOW: You are measuring the inner surfaces again?

A Measuring the inner surfaces of two tires. The interior wheel base of the vehicle that made these marks. This measured four feet ten inches.

JUDGE DANNEHY: Four feet ten inches?

A Yes, sir.

JUDGE DANNEHY: Thank you.

BY MR. CALDWELL:

Q Did you take that four-foot ten-inch measurement only at one place or more than one place?

A No. I took it at three or four different places along the course of these tracks.

Q Trooper, just getting back to your taking photographs for a moment: I will show you this photograph and ask you if you recognize that photograph (handing a photograph to the

JUDGE RUBINOW: Were there any bullet holes in it?

A I didn't pick it up, Your Honor.

JUDGE RUBINOW: Do you know whether there was an examination made of the defendant's vehicle to ascertain whether there were any blood stains in it?

A I believe there was, Your Honor. I have no knowledge.

JUDGE RUBINOW: You said you had examined it but not too closely. Were you examining it for blood stains?

A No. I was ordered to take photographs of the car.

JUDGE RUBINOW: You didn't make any attempt to ascertain whether there were any blood stains?

A No, sir, I did not.

JUDGE RUBINOW: Now, do you know the location of this clearing where Mr. Bray and Miss Cocheran claim that they parked?

A I don't know which clearing it was, Your Honor. There are several clearings adjacent to that area.

JUDGE RUBINOW: That is what I am trying to find out. How near is the nearest one, in terms of feet, to the point where the body is-- and that would be westerly of where the body is-- well--

A I would estimate perhaps one hundred yards.

JUDGE RUBINOW: Uh-huh, and one last question: Do you know what time the first radio broadcast was

about the finding of this body? Do you know when the first publicity came out about it?

A No, sir. I don't know the exact time.

JUDGE RUBINOW: Was it some time during the morning or the afternoon? Would you know that?

A Are you speaking of the public information?

JUDGE RUBINOW: Yes. Public information.

A No, sir. I don't have that information. I don't know when it was.

JUDGE RUBINOW: All right.

JUDGE DANNEHY: That's all?

MR. CALDWELL: I have nothing further.

MR. LAVITT: I have nothing further.

(Mr. Kaplan came into the courtroom and sat at the counsel table.)

them to the scene.

Q Did you do anything at the scene?

A I first was directed to begin a search of the scene and later was instructed to see if I could find the identity of the victim.

Q Who were you working with then?

A Sergeant Kalkus and Trooper Braithwaite.

Q And were you with Trooper Braithwaite when he met with Mr. Schaffer? A Yes, sir.

Q And did they later go to your office? A Yes, sir.

Q And a statement was taken from Mr. Schaffer?

A Yes, sir.

Q Did you, Trooper, make any-- I'm sorry-- Sergeant-- at any time following the 4th of July, 1972, did you make any examination of Mr. Schaffer's automobile? A Yes, sir, I did.

Q Did you recall when that was?

A On the evening of July 4 the vehicle was parked at my office, and I spoke with a lady friend of Mr. Schaffer's, a Bonnie Page, who was sitting in the car, and at that time I observed the right rear window was out of the vehicle and there were glass chips in the rear of the vehicle.

Q Do you know what kind of vehicle it was?

A A 1964 Pontiac.

Q And what color it was? A Maroon.

Q Did you at any time subsequent to that have occasion to

MR. CALDWELL: I have no further questions.

CROSS EXAMINATION BY MR. LAVITT:

Q Trooper, before you took the measurements of the vehicle at Troop C garage, had you talked to Trooper Hutchinson?

A I don't know if I talked to him before or after.

Q You don't remember? A No, sir.

Q You don't know whether you knew the result of his examination before or after you measured this vehicle?

A I probably didn't know the results. I know he had taken measurements at an earlier time.

Q You knew that? A I knew he took them.

Q When you measured this vehicle-- again try to remember as best you can-- did you know the results of his measurements when you took these measurements? A I probably didn't know what the results were. I know that he had taken measurements.

Q I see. Sergeant, on July 4, were you the Resident Trooper in Ellington then? A Yes, sir.

Q On July 4, when you went with the other Trooper to your office, why did you go out and examine the car then?

A I didn't go out with the reason to examine the car. I went out to talk with Miss Page, who was sitting in the car.

Q Did-- at that time did you-- was Mr. Schaffer a general suspect at that time, being the husband and having come forward as quickly as he did? A No, sir. He wasn't a suspect.

Q He was not a suspect? A No, sir.

Q Are you familiar with the requirements of the so-called Miranda warnings with respect to suspects? A Yes, sir.

Q You are? A Yes, sir.

Q You were then, weren't you? A Yes, sir.

Q And it is your clear recollection that at that time he wasn't suspected of anything? A Not at all.

Q How long did you stay at the scene when you went to assist? A Well, I was there for perhaps an hour at the original time.

Q Did you go back that morning before the body was removed?

A No. I don't believe I did go back after I left.

Q Do you know who removed the body to the hospital?

A No, I don't.

Q You have stated that the car had a broken right rear window? A Yes, sir.

Q Did you look at the car as you were talking?

A I saw the glass, yes. I looked in the back seat. I saw the glass in the back seat.

Q And Bonnie Page was with-- A Mr. Schaffer and his sister.

Q His sister Zandra? A Yes.

Q And there was a child there? A Yes. A young child.

Q How old was the child? Just an estimate?

A Just a baby, two or three years old.

Q Did you inquire as to how that rear window was broken?

A Yes. I asked Bonnie Page how it was broken.

Q What was the result of your investigation?

A She told me that she was told by Mr. Schaffer that a Puerto Rican threw a brick through the window.

Q That was the night of July 4?

A July 3.

JUDGE RUBINOW: When are you talking about?
When the conversation took place?

MR. LAVITT: Thank you, Your Honor.

BY MR. LAVITT:

Q She had stated that to you on the evening of July 4 at your office in Ellington? A Yes, sir.

Q Did you continue your investigation at the scene at a later date? A I had gone back to the scene on different occasions, yes, sir.

Q Let me give you your notes to refresh your recollection. What did you do? A At a later date?

Q Yes-- first of all, when did you go back?

A On July 6 I returned to the scene.

Q What did you do? A Along with Corporal Blanchette, we dug in the general vicinity.

Q Did you find anything? A No.

Q And-- oh-- when you arrived on the scene, Trooper, did you find the blouse-- there is a blouse shown in one of these photographs that was lying in the road-- there is a blouse referred to in State's Exhibit I, shown here on State's Exhibit I, under the letter B, blouse or shirt. Did you see that shirt?

A Yes, sir.

Q Did you pick it up? A No, sir.

Q Examine it in any way? A No, sir.

Q Did you ever examine that blouse? A No, sir.

MR. LAVITT: Okay. Thank you, Sergeant.

MR. CALDWELL: I have nothing further.

JUDGE DANNEHY: You may step down.

JUDGE RUBINOW: Just one question: Mr. Lavitt said to you did you suspect the defendant because he was the husband of the decedent and had come forward so quickly. Did the defendant tell you at that time how he happened to come to Ellington or how he happened to come to Rockville?

A After he heard of the death of his wife.

JUDGE RUBINOW: Did he tell you how he happened to hear of it?

A Yes, sir.

JUDGE RUBINOW: What did he say?

A He said he heard it on the 6 o'clock evening edition of WTIC-TV.

JUDGE RUBINOW: That an unidentified body had been found?

A Yes. They described a tattoo on the deceased's arm, and he recognized the tattoo as being that on his wife's arm.

JUDGE RUBINOW: All right. Thank you.

A Yes, sir.

Q And did you talk with him about searching his automobile?

A Yes, I did.

Q And what occurred as a result of that conversation?

A I explained to him that we would-- we wanted to search his vehicle. He was at Troop C at the time, requested that he give us his consent in writing to conduct a search of his vehicle, to which he agreed.

Q And do you know when this was? A July 7, I am quite sure.

Q July 7? A Yes.

Q Do you have the consent that he signed?

A I don't have it with me. It is part of our file.

MR. CALDWELL: Might I just have a moment,
Your Honor please?

(Pause.)

MR. CALDWELL: Possibly I can proceed on this question with a copy, and the original will be substituted when it is found. Do you have any objection?

MR. LAVITT: No objection.

BY MR. CALDWELL:

Q Lieutenant Kneeland, I show this document and ask you if you recognize that (showing a document to the witness)?

A No. This is not the-- that is a regular form of statement--

Q That is not it? A It is number 74, Mr. Caldwell.

MR. LAVITT: Lieutenant, how long did you talk with Mr. Schaffer before he signed this document?

A I would estimate probably about half an hour.

MR. LAVITT: Did you ascertain from Mr. Schaffer his educational background?

A No, sir, I did not.

MR. LAVITT: Did you ascertain from Mr. Schaffer anything with respect to his ability to comprehend what you were telling him?

A Yes, sir, I did.

MR. LAVITT: What did you ascertain?

A I explained the procedure involved in a consent-to-search form such as that, the legal rights that he had to refuse to agree to such a search, the possible consequences of agreeing to such a search, assured myself to my satisfaction that he understood the explanation that I gave him.

MR. LAVITT: Did you-- you told him what you could do under that. Did you tell him at that time that he was a suspect in the murder trial?

A Yes, sir.

MR. LAVITT: Did you inform him that any evidence which you found might be used against him?

A Yes, sir.

MR. LAVITT: And you are convinced that he understood what he signed here by way of consent?

A Yes, sir, I am.

MR. LAVITT: Does he understand what the word "all appurtenances thereto" meant?

A I don't know.

MR. LAVITT: Did you explain that to him?

A Yes, sir.

MR. LAVITT: You did?

A Yes, sir. He told me he understood it.

MR. LAVITT: He told you he understood it, but you didn't find out whether or not he went beyond grade school?

A No, sir, I didn't.

MR. LAVITT: Did you know at that time what part of the country he was educated in?

A Generally, yes.

MR. LAVITT: Where was that, what you then knew?

A In the southern part of the country. I don't recall what state specifically.

MR. LAVITT: Did you tell him specifically what C.S.B.I., the initials on that form, meant?

A Yes, sir, I did.

MR. LAVITT: You did?

A Yes.

MR. LAVITT: What do they mean?

A Connecticut State Bureau of Identification.

MR. LAVITT: And again what did you inform him

with respect to his right to remain silent?

A I explained to him that if he agreed--

MR. CALDWELL: Wait a minute. Right to remain silent-- I object. This is not questioning on a statement--

MR. LAVITT: All right.

MR. CALDWELL: --or a search warrant.

JUDGE DANNEHY: Is the question withdrawn?

MR. LAVITT: Withdrawn. What did you tell him specifically with respect to his constitutional right not to have a search made without a search warrant?

A I explained to him that we wanted to search his vehicle, that we had no right to search the vehicle unless he agreed that we could, and if he did consent to our search he could sign a form giving that consent, explained almost word by word-- in fact, it was word by word-- the wording of the form, the fact that if we discovered any physical evidence as a result of that search it could and would be used against him in court, that he had no obligation of any kind to sign the consent to search, that, if he didn't choose to sign it, he didn't have to, and if he chose to sign it we would proceed with the search.

MR. LAVITT: Did you tell him where the search would be conducted?

A Yes. I am sure I did.

MR. LAVITT: You did? What did you tell him?

A His vehicle was at Troop C at that time. I'm not sure I

specifically told him that search would be conducted at Troop C.

MR. LAVITT: Did you tell him the vehicle might or could be moved in connection with that search?

A I don't believe I did.

MR. LAVITT: You didn't. Did you inform him that in granting this consent, did you at that time discuss with him his right to remain silent, and that such a consent would be giving up that right?

MR. CALDWELL: If Your Honors please, I object to that. I don't think there is any requirement of being warned of any such thing.

MR. LAVITT: With respect to the applicable constitutional cases, when a person gives consent of this nature, that he is no longer being silent, it is part of the whole--

MR. CALDWELL: My understanding, if Your Honors please, is that on a question of a consent to search that the Miranda warnings and warnings of that type are not required, that the only requirement is the man be told that he doesn't have to consent to the search. He doesn't-- the State Police cannot search without his consent, but that he can give up that right and consent to it, and if he understands that and voluntarily gives it up, that is all he has to be warned of.

JUDGE DANNEHY: The objection is sustained.

MR. LAVITT: May I ask the Court to ask the

may make it academic.

JUDGE DANNEHY: Well, what have you learned that may make it academic?

MR. CALDWELL: There was a search warrant obtained.

BY MR. CALDWELL:

Q Lieutenant Kneeland--

JUDGE DANNEHY: Well, there is objection to this. It has been admitted over objection.

MR. CALDWELL: Yes. I still want it as an exhibit until I find out whether anything was taken subject to it.

JUDGE DANNEHY: All right.

BY MR. CALDWELL:

Q Do you, Lieutenant Kneeland, recall what time of day you got that consent signed? A Not precisely. I would say between 1:30 and 2 p.m., as I recall.

Q And was the automobile of the defendant, to your knowledge, searched as a result of that consent?

A Yes, sir, it was.

Q Did you do the searching? A Yes, sir-- well, yes, I did.

Q At some time later that day was a search warrant obtained for the car? A Yes, sir, it was.

Q But it was after the search had been made under the consent? A That's correct.

to the scene on that day? A We took the vehicle owned by the accused, Mr. Schaffer, back to the scene to see if it was possible to turn it around on that particular section of the road.

Q And who went with you on that occasion, if you recall?

A Sergeant Kalkus and the mechanic from the Troop, Donald Tracy.

Q And would you describe for us, if you would, Lieutenant Kneeland, what you did with the automobile-- what you did or someone else did and you observed?

MR. LAVITT: I object. I object to any testimony with respect to the vehicle being moved. The consent was made to search the vehicle on the premises. I specifically asked him whether or not he discussed with the accused what he was going to do, and he specifically said no, he didn't.

JUDGE DANNEHY: The objection at this point is sustained.

BY MR. CALDWELL:

Q Lieutenant Kneeland, on July 12, 1972, was that automobile belonging to the defendant in the possession of the State Police? A Yes, sir, it was.

Q And under what authority did the State Police claim possession? A The authority of the search warrant that was issued on July 7.

MR. CALDWELL: I am going to repeat that

question or ask that the question be answered at this time.

MR. LAVITT: I raise the objection there is nothing in the search warrant, as I read it, that would indicate that they had the power under the search warrant--

MR. CALDWELL: I-- I claim the--

JUDGE DANNEHY: You are claiming this under the authority of the search warrant?

MR. CALDWELL: I am claiming that their possession of the vehicle was under the authority of the search warrant, and that in the search warrant the State Police do not have to state what purpose they will do with things-- or make-- or how they will get a thing seized. It is like seizing a seat cover and running tests on it. They don't have to say on the seat cover they are going to do certain tests with it or perform certain tests. Seizing-- it gives the police the authority I think to run certain tests on it, and I claim this is a test run with a vehicle that was in the possession legally of the State Police, and possession was under the search warrant. I don't say the search warrant itself in so many words authorized the State Police to perform this particular test--

JUDGE DANNEHY: Then you are retreating?

MR. CALDWELL: No. I am merely saying the

possession of the automobile was valid under the search warrant, and with that valid possession they could run the test of taking the car up and turning it around. And-- and I further point out, under the search warrant the car itself was seized, not just the things in it. It was seized as an instrumentality of the crime. I believe that is stated in the search warrant.

(Pause.)

JUDGE DANNEHY: Would you state your objection more precisely.

MR. LAVITT: Well, yes, I will. Specifically, this situation, Your Honors, smacks right of Darwin. They took a car, they had it in their possession, they then, after they searched, found something which-- and I am bothered, incidentally, by the lack of the Miranda warning, and I am going to go into that. I am bothered by the fact he is not a suspect but leaves his car so that it can be searched. Now, all of a sudden it is seized. Now, all of a sudden he becomes a suspect. Now, all of a sudden they are worried about the fact they have got something illegally and they go out and get a search warrant, and under that search warrant they then moved the car and did things specifically not in the original consent. They attempted to give-- let's assume the original consent--

Lieutenant Kneeland is correct. Let's assume there is no problem here with Miranda. They then had limited consent. Having the vehicle in their possession, they decide, "We better make what we have got legal and turn the screw and get the search warrant and take the car." If they were doing anything they were acting under the original limited consent. They didn't tell the Judge they wanted to move the car. They then went and got the search warrant and attempted to make it legal for what they intended to do with the vehicle, and I object.

JUDGE RUBINOW: The trouble I am having is this: Are you claiming his constitutional rights were violated by their using this car?

MR. LAVITT: I am saying, Your Honor, that the search warrant which they got was an attempt to extend at that point and make legal the limited powers which they had at the outset under the consent.

JUDGE DANNEHY: Confine yourself to the test.

MR. LAVITT: And the test itself is beyond the power granted in that warrant, if they are acting under the warrant, because they didn't have the power in the consent.

JUDGE RUBINOW: But the warrant gave them the power to seize the car. What constitutional right of his is being violated after they have been

Q The bolt was painted? A Yes, it was.

Q It was. Were there any marks on the rock from the bolt?

A I didn't find any paint on the rock from the bolt.

Q In viewing it microscopically, marks from the marker plate and metal nut for comparison with the rock, were you able to find anything that would enable you to hook the license plate and the bolt to the rock?

A I didn't conduct that examination again, sir.

Q You just did the paint examination?

A That's correct.

Q Do you know who did the microscopic mark examination?

A Special Agent Siebert.

Q For the record-- and I don't have my exhibit list-- what was the Q number which you assigned to the rock, which is State's Exhibit-- A P.

Q State's Exhibit P. A Q 25.

Q And what was the K number which you applied to the license plate which is State's Exhibit R? A K 4.

Q And I take it, in response to the State's Attorney's question, you are not able to-- you were not able to determine whether or not the paint on that rock came from that license plate? A

The paint on this rock could have come from this license plate or any other Connecticut license plate painted in a similar manner.

Q I show you this document. Do you recognize what it is (showing a document to the witness)?

Q And do you know primarily what was being searched for?

A We were looking for a pistol.

Q And in the search of that apartment and the cellar of the building below, did you find any pistol?

A No, we didn't.

Q Thank you-- what date was that?

A Can I look at the--

MR. LAVITT: I have no questions, Your Honor.

JUDGE DANNEHY: He wants the date.

BY MR. CALDWELL:

Q I just want to put the date in.

A It was on the 13th of July, 1972.

Q Let me ask you one more question, Corporal Blanchette. Have you been connected with this investigation almost since its beginning? A Since its very beginning.

Q Do you know whether any pistol or any gun has been located in connection with this case?

A No gun has been recovered.

MR. CALDWELL: Thank you. No further questions.

CROSS EXAMINATION BY MR. LAVITT:

Q You were in on the very beginning? Did you go to the scene? A Yes, I did.

Q Do you recall what the weather was like that night?

A That night-- I got there early in the morning.

Q How early? A Approximately 6 o'clock.

Q Was the road wet or dry as you drove down the dirt road

proceed.

CROSS EXAMINATION BY MR. LAVITT:

Q Bonnie, did you make more than one statement to the police? A No. I just made one.

Q Just one? A Uh-huh.

Q Did you make any statement-- well, when you came to the hospital with Kenny? A I told them some questions, but I didn't think it was a statement because I didn't sign anything.

Q You didn't sign anything? A No, sir.

Q Did they ask you questions about you and Kenneth that night? A Yes, sir.

Q Did they ask you questions about Kenny? A Yes.

Q About him individually? Did they ask you questions about Mildred? A Yes.

Q Where were those questions asked of you?

A The man came down into the car and asked me them.

Q Was it a State Police officer? A Yes.

Q Do you remember who it was? A No, I don't.

Q Now, when did you first-- you were living with Kenny as man and wife, weren't you? A Not at first, no.

Q Not at first. When did you first meet Kenny?

A Me and Tommy went up there one night, and he introduced us.

Q Was he living with Mildred at that time?

A Kenneth was married to Mildred.

Q He was married to her. When was that that you met?

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NO. 3593

STATE OF CONNECTICUT

VS.

KENNETH SCHAFFER

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:

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SUPERIOR COURT

TOLLAND COUNTY

DECEMBER 3, 1973

REPORTER'S CERTIFICATE

This is to certify that the foregoing is a true
and accurate transcript of the case of State of Connecticut
vs. Kenneth Schaffer.



Official Reporter
Tolland County

JUDGES' CERTIFICATE

The foregoing transcript is hereby certified
and made a part of the record on appeal.

J.

J.

J.